

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAN COFFMAN §
VS. § CIVIL ACTION NO. 1:06cv531
JOSEPH M. SMITH, ET AL. §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Dan Coffman, an inmate at the Stiles Unit, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983 against Joseph M. Smith, Van L. Guidry, Farronn Dominic, Sergeant Broussard, and R. Waldron.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends plaintiff's complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. In his objections, plaintiff complains of being assaulted by another inmate more than two months after he filed his complaint. However, the determination of imminent danger for § 1915(g) purposes is

made at the time the complaint is filed. *See Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

While plaintiff alleges Warden Smith allowed the assault, plaintiff's complaint and objections are devoid of facts supporting plaintiff's conclusory allegation.

Plaintiff has not alleged specific facts demonstrating he was in imminent danger of serious physical injury at the time the complaint was filed. Accordingly, plaintiff is barred from pursuing his claims *in forma pauperis* pursuant to 28 U.S.C. § 1915(g).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this **27** day of **September, 2007**.



Ron Clark, United States District Judge